

Appointment

From: Anderson, Paul S. (ECY) [paan461@ECY.WA.GOV]
Sent: 1/15/2016 10:32:36 PM
To: Anderson, Paul S. (ECY) [paan461@ECY.WA.GOV]; Lori Terry [TerrL@foster.com]; Stephanie Weir [WeirS@foster.com]; Szalay, Endre [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10b5b40221b744bb86d436cb1918c48f-Szalay, Endre M.]; Wolfman, Sonia (ATG) [SoniaW@ATG.WA.GOV]
Subject: Gunshy Manor Double-wide Pasture discussion
Location: By phone
Start: 1/21/2016 7:00:00 PM
End: 1/21/2016 8:00:00 PM
Show Time As: Busy

Recurrence: (none)

Thank you everyone for making time for this call later this morning. I hope we can get this wrapped up to our mutual satisfaction.

I have reserved a conference call number for the call: Conference Line / Ex. 6 **PIN:** Conference Line / Ex. 6

Talk to you at 11:00 a.m.

Thanks, Paul

Appointment

From: Roberge, Steve [Steve.Roberge@kingcounty.gov]
Sent: 7/20/2016 8:08:53 PM
To: Roberge, Steve [Steve.Roberge@kingcounty.gov]; Paul Anderson [paan461@ecy.wa.gov]; Szalay, Endre [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10b5b40221b744bb86d436cb1918c48f-Szalay, Endre M.]; Claussen, Kimberly [Kimberly.Claussen@kingcounty.gov]; Pederson, Jon [Jon.Pederson@kingcounty.gov]; Rave-Perkins, Krista [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=785ba3699a0f4d42989fba22e659ce74-Rave-Perkins, Krista]; Gillen, Nick [Nick.Gillen@kingcounty.gov]
Subject: FW: Gunshy- EPA/KC/Ecy phone conference
Location: Skype Meeting
Start: 7/25/2016 5:00:00 PM
End: 7/25/2016 6:00:00 PM
Show Time As: Busy

-----Original Appointment-----

From: Roberge, Steve [mailto:Steve.Roberge@kingcounty.gov]
Sent: Wednesday, July 20, 2016 10:32 AM
To: Roberge, Steve; Claussen, Kimberly; Pederson, Jon; Rave-Perkins, Krista; Gillen, Nick
Subject: Gunshy- EPA/KC/Ecy phone conference
When: Monday, July 25, 2016 10:00 AM-11:00 AM (UTC-08:00) Pacific Time (US & Canada).
Where: Skype Meeting

→ Join Skype Meeting

This is an online meeting for Skype for Business, the professional meetings and communications app formerly known as Lync.

Join by phone

Conference Line / Ex. 6 (Washington state)

English (United States)

[Find a local number](#)

Conference ID:

[Forgot your dial-in PIN?](#) | [Help](#)

[OC(L03A)]

Message

From: Rave-Perkins, Krista [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=785BA3699A0F4D42989FBA22E659CE74-RAVE-PERKINS, KRISTA]
Sent: 9/11/2017 11:06:43 PM
To: Red Brick Road [redbrickrd@outlook.com]
CC: Szalay, Endre [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10b5b40221b744bb86d436cb1918c48f-Szalay, Endre M.]
Subject: RE: Gunshy Manor - King County DPER evading 404 process

No, we do not have any written communication from the County.

From: Red Brick Road [mailto:redbrickrd@outlook.com]
Sent: Monday, September 11, 2017 2:43 PM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>
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Would it be possible for you to provide us with the information you have regarding these vehicles, as well as the appropriate King County contact for followup?

Thanks!

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A few of us will be calling in, so best you provide us with a number we can call into.

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To: Red Brick Road <redbrickrd@outlook.com>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Hi: When you say 1:00 pm, you mean today (Monday 11th)? Or Wednesday the 13th?
Please send me a telephone number where we can call you. Otherwise, I will need to send you a phone number once I reserve a room/phone.

Thanks,
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From: Red Brick Road [<mailto:redbrickrd@outlook.com>]
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Alright, we'll take the 1:00pm slot. Thanks.

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No, we don't have time on either of those days. We might have another time slot open on the 13th if a different time on that day works better for you. However the latest on that day would be 3:00 – 4:00 on the 13th.
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Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Thank you, Krista.

Is there any availability on the 14th or the 15th?

From: Rave-Perkins, Krista [<mailto:Rave-Perkins.Krista@epa.gov>]
Sent: Wednesday, September 6, 2017 3:50 PM
To: Red Brick Road <redbrickrd@outlook.com>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
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Hello: Thank you for your patience. We would like to set up a call with you and have the following dates/times available:

Monday Sept. 11th 11:00 a.m. – 12:00 or 1:00 p.m. – 2:00
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Would you prefer to call us? If you would like for us to call you, please send me a phone number.

Thanks,

Krista Rave-Perkins, EPA
404 Enforcement Officer
206-553-6686

From: Red Brick Road [<mailto:redbrickrd@outlook.com>]
Sent: Tuesday, August 29, 2017 2:00 PM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>; Kowalski, Ed <Kowalski.Edward@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

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Hello: I am writing to confirm that I received all of your email messages and Cathy's responses (King County contact). I also understand that you have contacted the Corps of Engineers. I will look into the concerns and get back to you as soon as I can. It might not be until tomorrow before I get all the information.

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To: Kowalski, Ed <Kowalski.Edward@epa.gov>; Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>
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Dear Mr. Kowalski, Ms. Rave-Perkins:

Would you be available for a call with our community at your earliest convenience next week?

We're writing to EPA to express our deep concerns with King County DPER's oversight and enforcement of EPA's Gunshy Manor settlement agreement.

As you know, the owners of Gunshy Manor have obtained an initial grading and filling permit from KC DPER to proceed with the restoration work mandated by the settlement. However, contrary to what EPA told our community, KC DPER have allowed the Grading and Fill permit to proceed without a US Army Corps of Engineers Section 404 permit. KC DPER determined the work on the property would be outside of the Waters of United States Statute's authority, therefore removing that regulatory hurdle of receiving a US ACoE review. As far as we know, this was a unilateral determination by KC DPER, without involving EPA or the State of WA.

As you also know, this decision echoes a number of questionable decisions made by DPER in the past, all providing undue favoritism to the owners of Gunshy Manor.

Additionally, we have learned that last week a SEPA addendum was granted to the grading and fill permit, thereby completing the KC DPER paperwork requirements. However, there is still no Critical Areas Designation on file for the site. KC DPER have evidently decided that the work can proceed without following the CAO. Again, this is exactly contrary to what EPA told our community would happen. And not surprisingly, we have visual evidence that best practices are not being followed, e.g. re-compaction of "restored" surfaces adjacent to the roads, and a lack of silt barrier fencing alongside the Farm Ditches.

We infer from all of this that KC DPER is unlikely to enforce the EPA settlement document we reviewed earlier this year. In fact, a member of our community was told verbally by KC DPER permit supervisor Steve Reberg that KC's authority to order restoration is not necessarily going to match the settlement. This give us reason to believe that KC DPER will neither supervise nor enforce that the restoration work even comes close to matching what the agreement calls for, including amounts of removed fill or final "road" widths.

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Again, we would appreciate it if you could join us for a conference call to discuss these issues.

Thank you.

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To: Rave-Perkins, Krista [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=785ba3699a0f4d42989fba22e659ce74-Rave-Perkins, Krista]
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Subject: RE: Gunshy Manor - King County DPER evading 404 process

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Thanks,

Krista

From: Red Brick Road [<mailto:redbrickrd@outlook.com>]

Sent: Friday, August 25, 2017 9:43 AM

To: Kowalski, Ed <Kowalski.Edward@epa.gov>; Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>

Subject: Gunshy Manor - King County DPER evading 404 process

Dear Mr. Kowalski, Ms. Rave-Perkins:

Would you be available for a call with our community at your earliest convenience next week?

We're writing to EPA to express our deep concerns with King County DPER's oversight and enforcement of EPA's Gunshy Manor settlement agreement.

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Again, we would appreciate it if you could join us for a conference call to discuss these issues.

Thank you.

Message

From: Red Brick Road [redbrickrd@outlook.com]
Sent: 9/11/2017 9:29:34 PM
To: Rave-Perkins, Krista [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=785ba3699a0f4d42989fba22e659ce74-Rave-Perkins, Krista]
CC: Szalay, Endre [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10b5b40221b744bb86d436cb1918c48f-Szalay, Endre M.]
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Krista, thanks very much for your call.

One follow-up we'd like to act on is the issue of heavy machinery being deployed to the Red Brick Road.

During the call, you mentioned that the Nelsons' lawyer told EPA that the heavy machinery observed by neighbors on the Red Brick Road belongs to King County, and that the County had confirmed this. Given that the County itself is the guardian of the road's integrity, we'd like to understand which County department deployed these vehicles, and to what end.

Would it be possible for you to provide us with the information you have regarding these vehicles, as well as the appropriate King County contact for followup?

Thanks!

From: Rave-Perkins, Krista [mailto:Rave-Perkins.Krista@epa.gov]
Sent: Monday, September 11, 2017 10:37 AM
To: Red Brick Road <redbrickrd@outlook.com>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

The phone number to call in is: Conference Line / Ex. 6 When prompted, enter Conference Line / Ex. 6

From: Red Brick Road [mailto:redbrickrd@outlook.com]
Sent: Monday, September 11, 2017 10:17 AM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Ah, sorry, I meant today.

A few of us will be calling in, so best you provide us with a number we can call into.

From: Rave-Perkins, Krista [mailto:Rave-Perkins.Krista@epa.gov]
Sent: Monday, September 11, 2017 7:58 AM
To: Red Brick Road <redbrickrd@outlook.com>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Hi: When you say 1:00 pm, you mean today (Monday 11th)? Or Wednesday the 13th? Please send me a telephone number where we can call you. Otherwise, I will need to send you a phone number once I reserve a room/phone.

Thanks,
Krista

From: Red Brick Road [mailto:redbrickrd@outlook.com]
Sent: Sunday, September 10, 2017 6:10 PM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Alright, we'll take the 1:00pm slot. Thanks.

From: Rave-Perkins, Krista [mailto:Rave-Perkins.Krista@epa.gov]
Sent: Thursday, September 7, 2017 10:02 AM
To: Red Brick Road <redbrickrd@outlook.com>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

No, we don't have time on either of those days. We might have another time slot open on the 13th if a different time on that day works better for you. However the latest on that day would be 3:00 – 4:00 on the 13th.

Sorry, we have limited time available in September.

From: Red Brick Road [mailto:redbrickrd@outlook.com]
Sent: Thursday, September 07, 2017 9:56 AM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>
Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

Thank you, Krista.

Is there any availability on the 14th or the 15th?

From: Rave-Perkins, Krista [mailto:Rave-Perkins.Krista@epa.gov]
Sent: Wednesday, September 6, 2017 3:50 PM
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Cc: Szalay, Endre <Szalay.Endre@epa.gov>
Subject: RE: Gunshy Manor - King County DPER evading 404 process

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Thanks,
Krista Rave-Perkins, EPA
404 Enforcement Officer
206-553-6686

From: Red Brick Road [mailto:redbrickrd@outlook.com]
Sent: Tuesday, August 29, 2017 2:00 PM
To: Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>; Kowalski, Ed <Kowalski.Edward@epa.gov>
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Sent: 7/11/2016 11:14:31 PM
To: Szalay, Endre [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10b5b40221b744bb86d436cb1918c48f-Szalay, Endre M.]
CC: Paul Anderson [paan461@ecy.wa.gov]
Subject: Fw: Public comment - CAFO for CWA-10-2016-0088
Attachments: EPA CAFO Nelson 2016_Comment Letter 8July2016.pdf; ATT00001.htm

From: Ex. 6
Sent: Friday, July 8, 2016 5:50 PM
To: Luna, Teresa; Rave-Perkins, Krista; Pongkhamsing, Chan
Cc: karen.walter@muckleshoot.nsn.us; Szerlog, Michael; matthew.j.bennett@usace.army.mil; Joe.Burcar@ecy.wa.gov; patrick.mcgraner@ecy.wa.gov; jon.pederson@kingcounty.gov
Subject: Public comment - CAFO for CWA-10-2016-0088

RE https://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/nelson_cwa_2016

Dear Ms Luna:

Please find attached my Public Comment response concerning the enforcement identified by the United States Environmental Protection Agency's ("EPA's") Administrative Order on Consent ("AOC"), Docket No. CWA-10-2016-0087 and Consent Agreement and Final Order ("CAFO"), Docket No. CWA-10-2016-0088, regarding Respondents William C. Nelson and The Estate of Barbara Nelson.

I would request that EPA hold additional public meetings on this issue in light of the serious omissions I have identified in this public comment response. I retain my right to participate in any public hearing.

Thank you,

Ex. 6

Redmond, WA 98053

Ex. 6

Redmond, WA 98053

Tel. **Ex. 6**

ATTN: Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

July 8th, 2016

RE: Public Comments on USEPA Docket No. CWA-10-2016-0087; USEPA Docket No. CWA-10-2016-0088

To whom it may concern:

I am providing the following critical opinions as part of the June 9th, 2016 official public notice of US EPA enforcement action as described in the Consent Agreement and Final Order ("CAFO") that was issued per Section 309(g)(2)(B) of the Clean Water Act ("CWA") to the "respondents" known as William C Nelson and The Estate of Barbara Nelson of Redmond WA.

There are omissions in the "respondents" agreement with EPA such that they are of material long term impact to the People of the United States right to clean water and also to the Muckleshoot Nation Tribe's federally recognized fishing rights recognized by and protected by Federal, State and Local authorities. These significant omissions make this CAFO a bad agreement for me a property owner **Ex. 6** downstream from the enforcement property known as "Gunshy Manor". One does wonder if the scope of EPA's order for mitigation is flawed to the point of being arbitrary and capricious for as I review the CAFO, there are at least four significant problems remaining unabated or mitigated to the detriment of the Clean Water Act.

To begin with, "respondents" Critical Areas Report makes passing note of these illegal fill, discharge and dredging in "Wetland C", yet EPA CAFO fails to act upon those and investigate to find the underlying gravity of the damages. Wetland C is located between the 196th Ave NE road and the "respondents" doublewide manufactured home and is heavily flooded during wet seasons, see below image A



Image A – Wetland C flooding in wet season conditions prior to Wetland C dewatering 2009-12.

The “respondents” ill gotten gains from dewatering Wetland C are evident in the “Respondents” own ecology report Section 4.2.1.3, see below copy. This unpermitted dewatering results in weakness of higher Habitat rating values in Wetland C, site of this illegally built wetland dewatering system! This is only noted in minor details in the Critical Areas document the “Respondents” provided to EPA in 2014, “Exhibit CC” below:

4.2.1.3 Wetland C

Wetland C is a moderately-sized wetland (approximately 14,195 sf in size) located north of an existing access road off of 196th Avenue NE (**Figure 6**). This wetland contains yard drains and a system of pipes that connect to an electric pump. Water was within 14 inches of the top of the yard drains during our August 2014 site evaluation.

Vegetation within Wetland C consists of various pasture grasses, soft rush, Pacific bedstraw, western yellowcress (*Rorippa curvisiliqua*), and American brooklime (*Veronica americana*). Upland vegetation was similar to wetland vegetation, but typically did not have American brooklime, soft rush, or western yellowcress.


Soils within Wetland C consist of dark brown gravelly sandy loam beginning at the surface to approximately 10 inches below ground surface. Between 10 inches to approximately 18 inches below ground surface the soils demonstrate a dark gray with dark yellowish-brown redoximorphic features. Upland soils demonstrated a depleted matrix however were not considered part of the wetland due to an absence of hydrologic indicators.

Hydrology is supported, for the most part, by a seasonal shallow groundwater table. Hydrology was confirmed by drainage patterns and topography and supported by positive dipyrldyl reactions.

We rated Wetland C using the Washington State Wetland Rating System for Western Washington. It scored 16 for Water Quality Functions, 16 for Hydrology Functions, and 9 for Habitat Functions. The Total Score for Functions was 41, which satisfies the criteria for characterization as a King County Category III wetland. Category III wetlands with Habitat Scores of less than 20 have a 75-foot standard buffer.

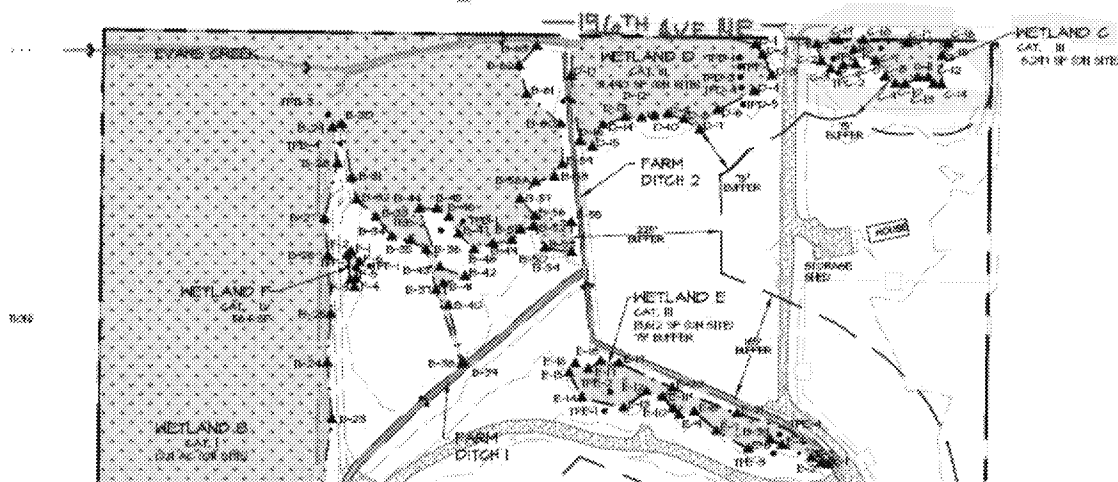
4.2.1.4 Wetland D

Wetland D is a moderately-sized (approximately 33,778 sf) wetland located south of the

 TALASAEA CONSULTANTS, INC. Resource & Environmental Planning 15020 Bear Creek Road Northeast Woodinville, Washington 98077 Bus (425)861-7550 - Fax (425)861-7549	FIGURE #5		DESIGN	DRAWN	PROJECT
	KING COUNTY CRITICAL AREAS MAP		BS	ABS	1147
	GUNSHY MANOR		SCALE		
	REDMOND, WASHINGTON		NTS		
			DATE		
		REVIS			
				5	
				Z:\DRAWING\1100	
				ESTATE 00646	

© Copyright - Talasaea Consultants, INC.

Fig 6



Yet, this Wetland C is where much of the problems with preserving clean water for Evans Creek still suffer greatly in the CAFO and I respectfully disagree with the EPA agreement as it enriches the “respondents” at the greater loss to the people of the United States and the Nation of the Muckleshoot Tribe.

Specifically, this CAFO suffers from critical omissions in documentation from the “respondents” for the following specific issues:

1. Makes permanent “Respondents” illegal pumping discharge into Evans Creek via 4” pipe dewatering “Wetland C” See Appendix A, Exhibit 1 and 2.
 - a. **OMISSION:** Where is “respondents” disclosure of the “As Built” for this underground pipe that discharges unknown water quality into Evans Creek beside the northern most Evans Creek bridge on 196th Ave NE. Failure to disclose this is a big problem as it affects water quality on Evans Creek. Why does EPA not know of this pipe that is visible from standing alongside 196th Ave NE (Red Brick Road) just north of the Northern Evans Creek bridge?

2. *Makes permanent "Respondents" wetland dewatering sump pump installed between 2009 and 2012 that drains the hydrology from "Wetland C" aka the pasture between the Doublewide mobile home and 196th Ave NE so as to make "Access Road" to 196th Ave NE of lower ecological impact in the "respondents" 2014 EPA Phase 2 mitigation plan and act as an unpermitted dike for Evans Creek floodwaters that for 100 years had passed over a lower access road to Wetland C from Wetland D beside Evans Creek. Please see Appendix A, Exhibits 3a, 3b, 4, 5 and 6*
 - a. **OMISSION:** Where is "respondents" disclosure of the "As Built" for this underground system of pipes and catchments? Where is the "Respondents" documentation with Puget Sound Energy for the installation of a new Power Meter to supply the electricity for the Sump Pump that could corroborate the date this dewatering pump was put into production? Where is the "Respondents" power bill that pays the electricity that the Sump Pump uses to dewater the Wetland C? I find no evidence of this is noted in "respondents" official report to King County DPER Grading Restoration Permit Application submitted December 2, 2014 Addendum to Technical Information Report (TIR) with a revised Phase 2 Mitigation/Restoration Plans.
3. *Makes permanent "Respondents" 2009 – 2012 "Wetland C" dewatering system of approximately 1 acre in size consisting of underground piping, catchments and drainage system installed to drain the area so as to reduce evidence in hydrology which is noted in "respondents" 2014 EPA Phase 2 mitigation plan as having little wetland habitat post dewaterment. See Appendix A below Exhibits 7a, 7b and 8.*
 - a. **OMISSION:** Where is the disclosure from the "Respondents" for when this complex system of pipes was trenched, installed and buried and by whom did they contract to fulfill the work and for what purpose and by whose government authority did they receive permission to dewater that Wetland C? There are receipts in "respondents" that show initials "BF" approved many bills for 1,000's of feet of trenching and drainage and thousands of feet of pipe in a one month period (see Cascade Utility Invoice 7226 8/25/09, H.B. Jaeger Company Order 406805 9/25/09, Nation & Sons Co invoice 864435 9/25/09)
4. *Makes permanent "Respondents" 2009-2012 building of an Evans Creek floodwater dike disguised as a farm access road upgrade that now is built up to the same grade level starting at 196th Ave NE and extends out to the Doublewide mobile home trailer and without a culvert. See Appendix A, Exhibits 9, 10, 11, 12a, 12b, 13a, 13b, and 14.*
 - a. **OMISSION:** Where is the disclosure by the "Respondents" for how much illegal fill was placed in this Access Road? There must be thousands of tons of non permeable recycled asphalt and fill applied specifically here to raise the road from just above pasture level to the same grade as 196th Ave NE (Red Brick Road) which is in some locations 13' above the landscape beside it. In addition, pre 2009 this road/driveway had a culvert running alongside the 196th Ave NE entrance, where did that culvert go and by whose authority did they have the permission to work in a wetlands buffer? Why are all receipts from Cascade Utilities calling out thousands of tons of fill as simply "maintenance"? The scale map shows 1" = 30', yet a site visit would show that the top dressing

is much greater and the map is inaccurately showing the access road base “toe” to be stretching at least 30’ and this is not disclosed as the past access road there which they claim is existing was a simple one lane road that shared a double width entrance at 196th Ave NE with the Doublewide Manufactured home.

I wish to express my deep misgivings about this EPA CAFO that will forever seal my downstream fate of frequent flooding for I do live **Ex. 6** from “respondents” activities and have property that Evans Creek runs through my land. I am directly impacted because this CAFO fails to mention nor mitigate the other thousands of yards of dredging and fill work performed in and around Wetland D and Wetland C, work that that dikes them off, drains them, and pushes ground water into Evans Creek resulting in polluted floodwaters downstream. This harms our property rights and threatens our property with repeat and frequent floodwaters due to the “Respondents” unpermitted activities noted above and these mitigations are missing from the enforcement agreement and will continue further damages to Evans Creek, an essential water body in the Sammamish River watershed, a Rivers and Harbors Act recognized body that is regulated by statute known as the CWA.

EPA Docket No’s. CWA-10-2016-0087 and CWA-10-2016-0088 need to be revisited so that the CAFO is less arbitrary and capricious to the effect it permits an illegally constructed road that is functioning as an Evans Creek floodwater “dike” as well as an illegally constructed wetland pumping station on the other side of the “dike” road to remain in place and to this very day, it is still in active service on the “Gunshy Manor” land in question. I respectfully ask that the EPA Enforcement Unit revisit these matters (CAFO, Sec IV, 4.3) so as to mitigate the gravity and extent of downstream repeat flooding of my land that has occurred since 2009 when the “Respondent” began their unpermitted dredging and fill of the “farmland” upstream from us. The people downstream reasonably expect the EPA to stop the illegal activities that the Clean Water Act was meant to stop from happening, e.g. construction of roadways over wetlands and pumping out of wetlands, however, this CAFO is allowing such activities to continue in perpetuity unabated.

Thank you for accepting and documenting the receipt of my comments as a concerned citizen who is directly downstream of the “respondents” area of enforcement action. I do not support the EPA’s CAFO as it currently stands and would cordially request the EPA resolve the serious damages and future risks that I have outlined in the above letter and hold public meetings to announce the reopening of this enforcement around the remaining Clean Water Act issues.

Cordially yours,

Ex. 6

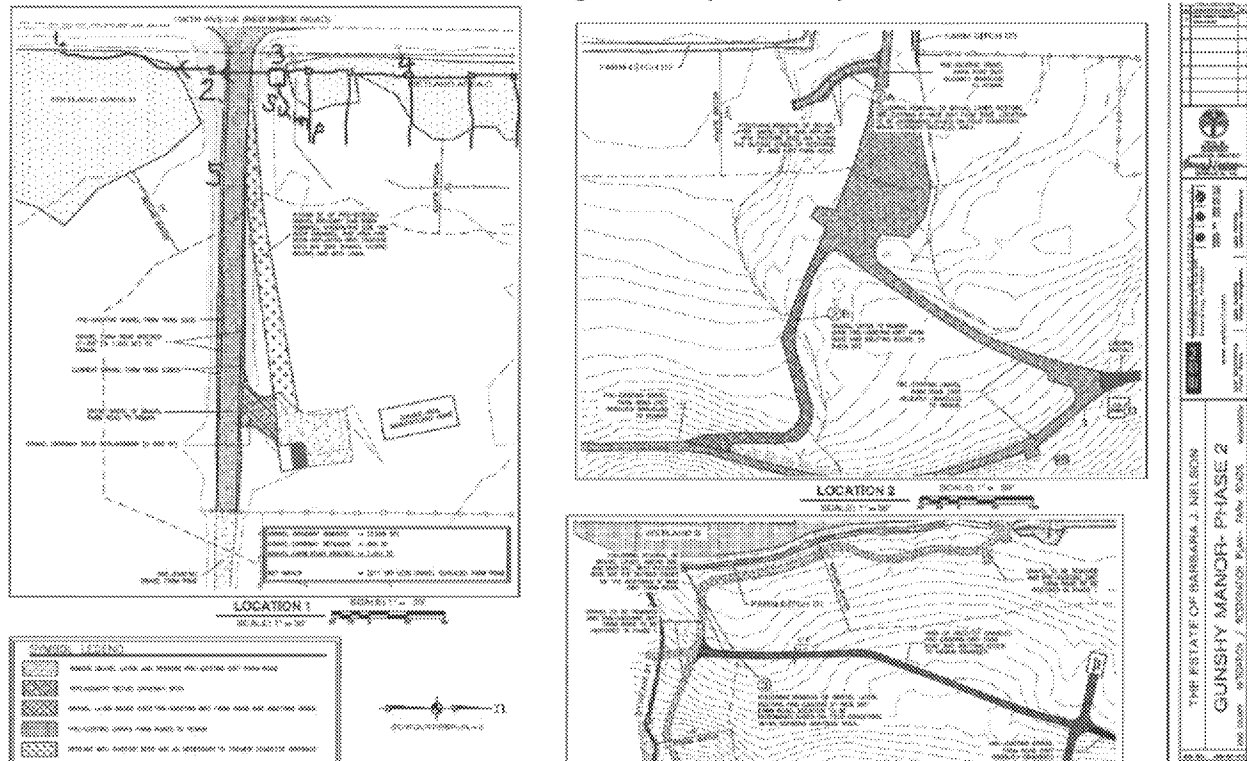
EPA CAFO Docket No. CWA-10-2016-0088

cc: Chan Pongkhamsing, EPA Region 10, CWA 404 Enforcement Coordinator
Krista Rave-Perkins, EPA Region 10
The Honorable Maria Cantwell, United States Senate
Karen Walters, Muckleshoot Tribal Nation, Fisheries Division, Habitat Team Leader
Matthew Bennett, Regulatory Section Branch Chief, U.S. Army Corps of Engineers
Joe Burcar, Interim SEA Section Manager, Shorelands and Environmental Assistance, WSDoE
Patrick McGraner, Wetlands Specialist, WSDoFW
Jon Pederson, King County, DPER, Project Manager (File No GRDE 14-0143)

APPENDIX

A

The focus of my public comments concerns the “Respondents” illegal dredging and fill related to the area in and alongside Wetland C and D in the CAFO. On the below map, it is titled “Location 1” and comes from “Respondents” 2014 King County grading permit addendum. It is also the case that the “Respondents” omit any listing of onsite dewatering (item 4), pumping (item 3), quantity of material added to raise 196th Ave NE access road (item 5) or the 6” discharge cleanout pipe (item 2) nor the 4” discharge pipe emptying beside Evans Creek (item 1). This document is sourced from King County DPER permit GRDE 14-0143



Exhibits 1 and 2.

In EPA CAFO, there is “exhibit A” in which the “Respondents” do not account for when, who and why they installed the 4” discharge pipe that empties to Evans Creek and so the CAFO as is would permit this to continue thus polluting Evans Creek with “Respondents” unknown water quality discharges. To maintain that discharge there is a new 6” cleanout pipe beside the newly raised 196th Access Road. This pipe was installed between 2009 and 2012.



Exhibit 1, 4” Wetland C pumping station discharge pipe in use beside Evans Creek



Exhibit 2, Cleanout standpipe for sump pump from Wetland C under access road to Evans Creek discharge 4" pipe alongside road embankment in background.

Exhibits 3a, 3b, 4, 5 and 6.

In Exhibit A of the CAFO, the "Double Wide Pasture" is a wetland C. Between 2009 and 2012 a large scale underground dewatering system was installed and "respondents" ordered service from Puget Sound Energy and a bill was generated for install and monthly use. Where is this info from "respondents", this is a significant omission from disclosing all Gunshy Manor work.



Ex 3a, Sump Pump post 2009, drain 1 in Wetland C is visible in background beyond sump station green cover.



Exhibit 3b, Wetland C sump pump repair and presence of heavy equipment to unclog while portable trash pump empties Wetland C.



Exhibit 4, Same site, looking North from the Access Road that was till at the old grade before being filled and regarded. There is no Sump Pump beside this large plant along the fenckline of Wetland C. This is a picture from pre 2009-2010. Wetland C in the background and the Access Road in the foreground leading from 196th Ave NE on the left. Notice extensive water in the Wetland C.



Exhibit 5, Wetland C dewatering Sump Pump Meter ID, Puget Sound Energy supplied a meter when this sump pump began dewatering the Wetland C

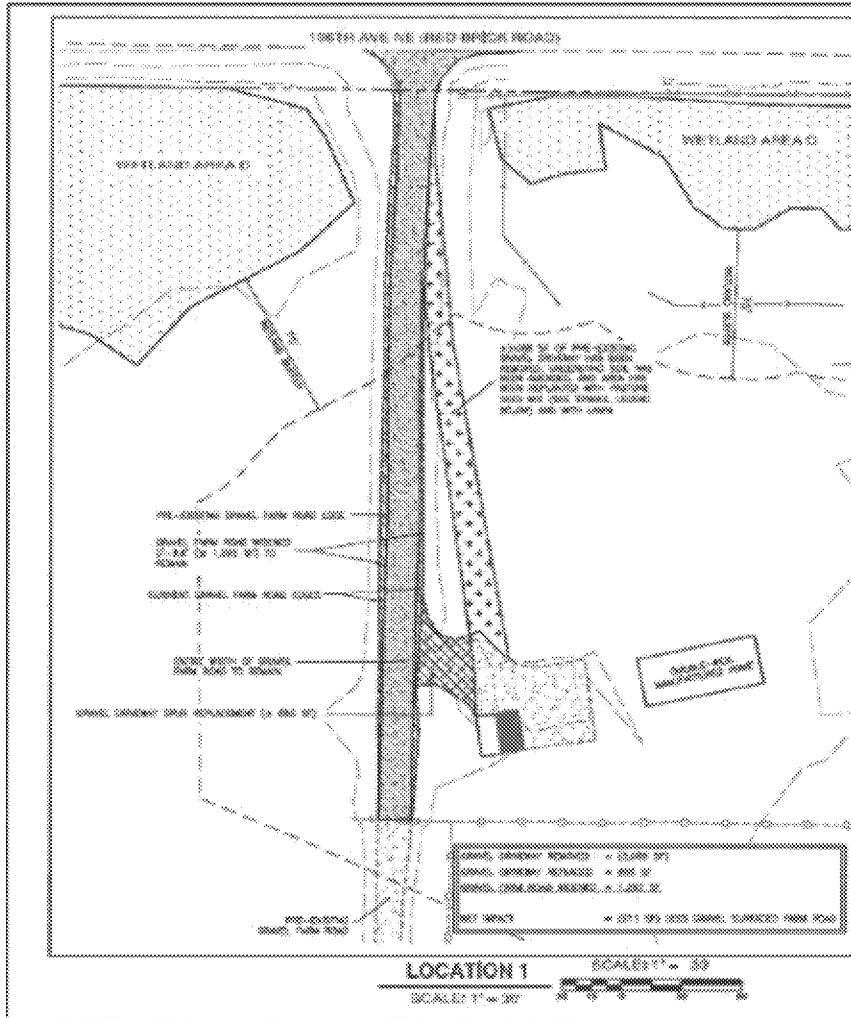


Exhibit 6, Wetland C per “respondents” ecology report provided to King County DPER in 2014 and it is missing any notation of vast drainage and discharge system performing Wetland C dewatering 24x7x365 which began sometime after 2009.

Exhibits 7a, 7b and 8.

In Exhibit A of the CAFO, the “Double Wide Pasture” is a wetland C. Between 2009 and 2012 a large scale underground dewatering system was installed and “respondents” have not shown an “As built” plan nor given details of it in any EPA or King County agency that would have a need to know. There are now in place at least five drain trenches approx 30’ long or more that serve as buried drainage lines. Each drain line trench leads off perpendicular to 196th Ave NE would consist of 6” perf pipe with round non-compactable rock in each trench so that surface and ground water drains into the Sump Pump where it is subsequently pumped under the Access Road to a 4” outlet discharged beside Evans Creek.



Exhibit 7a, Wetland C catchment drain for perf pipe that runs out towards the trees in the background, slight ground depression marks drain trench



Exhibit 7b, Wetland C, catchment drain north of sump pump station and running east to west with catchment drain marking home run 6" pipe to feed wetland water to sump pump.



Exhibit 8, Wetland C in December 2015 drained after weeks of El Nino rains, evidence of drain lines across the land in the dark stained stripes.

Exhibits 9, 10, 11, 12a, 12b, 13a, 13b and 14.

In Exhibit A of the CAFO, the “Double Wide Pasture” is a wetland C. Between 2009 and 2012 flooding of the wetland has drastically stopped now that the “Respondent” engaged a construction company called Cascade Utilities to build up the driveway to 196th Ave NE this is labeled on below picture. This new driveway grade is the same height as the road height of 196th Ave NE. This has created a dike to block flood water from Evans Creek naturally flooding into Wetland C, as it had for nearly 100 years before this illegal dike was built by “respondents” “Respondents” must disclose how much fill was placed on this “access road” in order to truly understand the magnitude of the tonnage on this new 40’ wide 200’ long stretch of roadway



Exhibit 9, Pre 2010 Wetland C was linked to Wetland D across pasture grade level driveways, flood waters from Evans Creek



Exhibit 10, Post 2010 Wetland C to left is no longer flood water connected to Wetland D to right, culvert removed, making for a dike that forces more floodwaters into downstream property.



Exhibit 10, pre 2010, Access Road is pasture grade with culvert and wetland D&C linked



Exhibit 11, post 2010, Wetland D to right, access road raised to same level of 196th Ave NE, culvert gone and Evans Creek flood waters cannot pass dike to reach Wetland C.



Exhibit 12a, post 2010 the Access Road dikes off Wetland D to right from Wetland C left



Exhibit 12b, December 2015, “respondents” heavy equipment is parked side by side with space between trucks on “Access Road”. Also not “respondents” active Wetland C trash pumping underway in picture, discharging water pollution into Wetland D. The buried 6” sump pump pipe cleanout standpipe is visible in foreground, green with white cap.

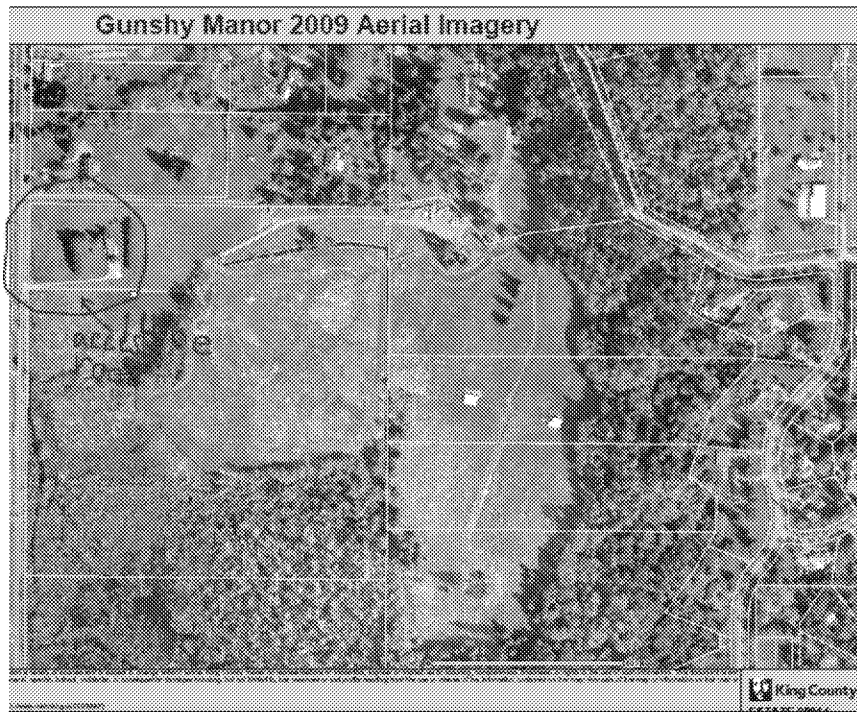


Exhibit 13a, EPA "Exhibit G" pre 2009 single lane access road

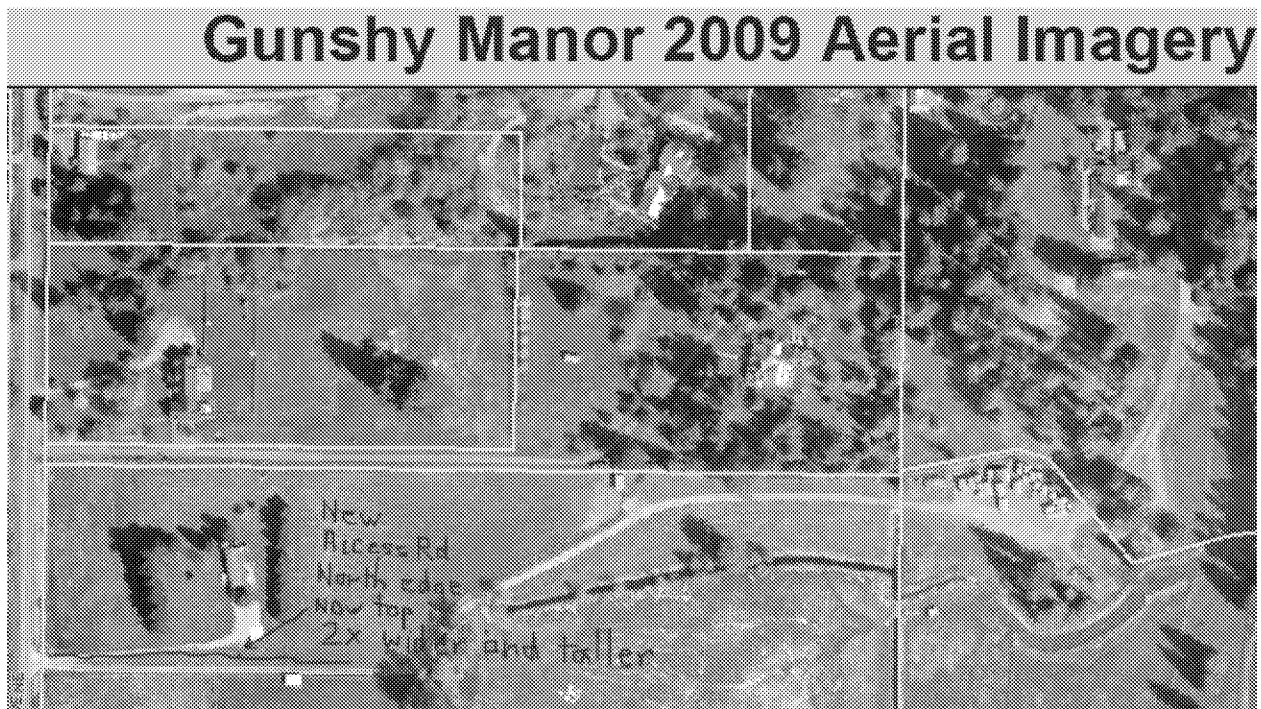


Exhibit 13b, EPA "Exhibit G", 2009 access road was single lane and now red line shows current expansion laterally is not accurately portrayed in "respondents" mapping.

Exhibit 14, "Respondents" map supplied to EPA and King County DPER shows Access Road to 196th Ave NE, scale would portend this road is only 18' wide on top, but Exhibit 12b above shows "respondents" heavy equipment 2x2 side by side, discredits map disclosure.

Message

From: Szalay, Endre [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=10B5B40221B744BB86D436CB1918C48F-SZALAY, ENDRE M.]
Sent: 7/6/2016 8:12:36 PM
To: Paul.s.anderson@ecy.wa.gov
Subject: FW: PUBLIC COMMENT on EPA docket CWA-10-2016-0088
Attachments: EPA CAFO Nelson 2016_Comment Letter 5July2016.pdf

Endre Szalay
US EPA Region 10
Office of Regional Counsel
206-553-1073

From: Szerlog, Michael
Sent: Tuesday, July 05, 2016 3:44 PM
To: Szalay, Endre <Szalay.Endre@epa.gov>
Cc: Kenknight, Jeff <Kenknight.Jeff@epa.gov>
Subject: FW: PUBLIC COMMENT on EPA docket CWA-10-2016-0088

Endre,

Not sure if this is the same letter?

Thanks

Michael J. Szerlog, Manager

Aquatic Resources Unit
Office of Environmental Review and Assessment
Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mailstop OERA-202-2
Seattle, Washington 98101
(206) 553-0279
szerlog.michael@epa.gov



From: Ex. 6
Sent: Tuesday, July 05, 2016 2:34 PM
To: Luna, Teresa <Luna.Teresa@epa.gov>; Rave-Perkins, Krista <Rave-Perkins.Krista@epa.gov>; Pongkhamsing, Chan <Pongkhamsing.Chan@epa.gov>
Cc: CELARSEN@redmond.gov; MWHATTAM@redmond.gov; karen.walter@muckleshoot.nsn.us; Szerlog, Michael <Szerlog.Michael@epa.gov>; matthew.j.bennett@usace.army.mil; erik.stockdale@ecy.wa.gov; patrick.mcgraner@ecy.wa.gov; jon.pederson@kingcounty.gov
Subject: PUBLIC COMMENT on EPA docket CWA-10-2016-0088

RE https://yosemite.epa.gov/R10/ENFORCE.NSF/Current+Public+Notices/nelson_cwa_2016

Dear Ms Luna:

Please find attached my Public Comment response concerning the enforcement identified in the Evans Creek "Red Brick Road" area outlined by the United States Environmental Protection Agency's ("EPA's") Administrative Order on Consent ("AOC"), Docket No. CWA-10-2016-0087 and Consent Agreement and Final Order ("CAFO"), Docket No. CWA-10-2016-0088, regarding Respondents William C. Nelson and The Estate of Barbara Nelson.

I would request that EPA hold additional public meetings on this issue in light of the serious omissions I have identified in this public comment response. I retain my right to participate in any public hearing.

Thank you,

Ex. 6

Ex. 6

Redmond, WA 98053

Ex. 6

Redmond, WA 98053

Ex. 6

ATTN: Teresa Luna, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-158)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

July 5th, 2016

RE: Public Comments on USEPA Docket No. CWA-10-2016-0087; USEPA Docket No. CWA-10-2016-0088

To whom it may concern:

This written contribution concerns the June 9th, 2016 official public notice of US EPA enforcement action as described in the Consent Agreement and Final Order (“CAFO”) that was issued per Section 309(g)(2)(B) of the Clean Water Act (“CWA”) to the “respondents” known as William C Nelson and The Estate of Barbara Nelson of Redmond WA, CWA-10-2016-0088. I understand that the EPA regional administrator has assigned the Administrative Order on Consent “AOC”, Docket No. CWA-10-2016-0087 per the terms in the CAFO and as such I wish to officially register my disagreement with the enforcement the Director of the Office of Compliance and Enforcement is proposing in the CAFO and request that EPA point of contact being Krista Rave-Perkins, Water and Wetlands Enforcement Unit, revisit the determination for the following critical omissions that fail to protect damages to me and other downstream landowners such as the City of Redmond Parks, continues to reward Clean Water Act scofflaws, and perpetuates lost Tribal fishing rights and public recreation uses of the Evans Creek waters that feed the Sammamish watershed.

After review of the “CAFO” it is of great concern to me as a property owner downstream from the enforcement property known as “Gunshy Manor” that the scope of EPA’s order for mitigation is flawed for being arbitrary and capricious such that it:

- A. Makes permanent CWA violations that result in unprecedented downstream flooding on my property and my fellow landowner neighbors (Including the City of Redmond’s Arthur Johnson, Martin, and Perrigo Parks) downstream of the “respondents” illegal activities, see pictures Appendix A
- B. Gives scofflaw landowners financial incentive and competitive advantage over those that do follow the regulatory rules of the CWA rather than penalties for circumventing required permits so as to maximize personal profit at the expense of those land owners who follow the law.

- C. Harms the US taxpayer, Tribal fishery rights and recreational waterway users who continue to experience CWA losses because this agreement fails to make right the full damage caused, see picture Appendix B

Regarding Failure “A” above, Evans Creek runs through my land downstream of “Respondents” property, aka “Gunshy Manor” and this CAFO fails to mention nor mitigate the other thousands of yards of dredging and fill work performed on the land all with the intent of draining the wetlands and moving more Evans Creek floodwaters downstream. The CAFO fails to stop the illegal pumping and direct discharge pipe feeding into the Evans Creek at the northern most bridge next to the 196th Ave NE from this illegal pumping (See Appendix A picture). Why doesn’t the CAFO mention or require the “Respondent” to restore to prior condition a raised driveway that is now 4+ feet higher and 30 feet wider than it was in 2011? This “driveway” is now a commercial grade city caliber residential road that is of the same grade height as the National Historic Landmark Road, 196th Ave NE. Prior to this work, the driveway was at pasture grade and seasonal flood waters freely passed over it to the wetland known as the “Double Wide Pasture”. I do not understand why this CAFO selectively seeks fill removal in some impacted worksites but fails to even mention work illegally performed elsewhere in the wetlands, i.e. “Double Wide Pasture”. In this case, it is arbitrary and capricious for the CAFO to still allow an illegally constructed road that is functioning as an Evans Creek floodwater “dike” as well as an illegally constructed wetland pumping station on the other side of the “dike” road to remain in place and in it is still in active service on the “Gunshy Manor” land in question. I respectfully ask that the EPA Enforcement Unit revisit these matters (CAFO, Sec IV, 4.3) so as to mitigate the gravity and extent of downstream repeat flooding of my land that has occurred since 2012 when the “Respondent” began their unpermitted dredging and fill of the “farmland” upstream from us. The people downstream reasonably expect the EPA to stop the illegal construction of roadways over wetlands and stop the illegal pumping out of wetlands, however, this CAFO is allowing such activities to continue unabated. If this illegal dike road and sump pump station are left in place the downstream landowners including the City of Redmond Arthur Johnson, Perrigo and Martin Parks will permanently face extraordinary wet season flooding beyond the 100 year flood plain and causing loss of use costs and additional property protection costs for which the EPA is a party through lack of enforcement.

Regarding failure “B” above, the CAFO Sec IV, 4.3 is lacking thorough examination of the true economic benefit this CAFO provides the “Respondent”. This CAFO benefits the “Respondent” in indirect and direct terms so much that this enforcement has no penalty consequence comparative to the costs a law abiding person would end up spending if they simply follow the permit process in collaboration with the authorities. One example, why is the CAFO not calling for entire removal of all fill? “Respondent” provided EPA receipts of 5,000 yards of fill, but CAFO calls for only 5% of that to be removed. Another example, why doesn’t the CAFO ensure that the mitigation work is not eligible for a Tax Deduction? The terms only explain the \$10,000 penalty is non-tax

deductible and EPA has chosen to make no mention of the cost of mitigation, thus it is apparent that the "Respondent" will actually gain a tax deduction for repairing wetlands and waterways they intended to destroy to begin with, as part of their prior public record land development plans. What economic reasoning is there for such a low penalty? The "Respondent" is not a simple farmer with limited financial means nor is the "Respondent" an uneducated farmer nor is the Clean Water Act a new regulation and finally, ignorance is not a valid excuse to apply in this enforcement. The "Respondent" is aware for many years prior to 2012 that our Evans Creek valley community has worked with King County regulators in every case of land development and public records show we are 20+ households who hold frequent meetings discussing our land use and many of our households have spent in excess of \$10,000 (the value of the financial penalty in the CAFO) to permit our own land use. In this case, "Gunshy Manor" penalty provides the "Respondent" a competitive advantage compared to fees paid by other landowners and households in the Evans Creek valley. Why is the EPA in effect allowing for the second most common source of stream impairment, urbanization in the form of these "farm roads" with layers upon layers non compactable material? Farm machinery is for soft dirt, there is no need on a farm for the "Respondent" to build a 40'+ wide road of this engineering caliber, only housing development construction machines do. This newly constructed city road, if the EPA allows it, functions as a massive dike "road" that was built starting in 2012 and replaced a simple driveway access at 196th Ave NE (Red Brick Road)? This dike "Farm road" changes Evans Creek stream hydrology, e.g. higher flood peaks, lower base flow, sediment supply and transport, water chemistry, and aquatic organisms. The soil functions that will be lost due to this CAFO took 100's of years to develop and yet there is no penalty assigned to this loss of resource where the dike "farm road" connecting to 196th Ave NE is allowed to remain unchanged.

Regarding failure "C" above, this CAFO is failing to stop the cumulative effect of the "Respondents" damage. The impact on Evans Creek and Sammamish waterway [...which results from the incremental impact of this "Respondents"[sic] actions when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." [40 CFR 1508.7.]]

Thus, this CAFO harms the US Taxpayer who would be entitled to penalty amounts far greater than \$10,000. The EPA penalty amount represents only 5% of the value of the total fill used to impact the wetlands. The "Respondent" should be paying a minimum fine of \$150,000 (\$30 per yard). The US Taxpayer must laugh at the outlandish claims the "Respondent" has provided in CWA-10-2016-0087-AOC "TALASAEA Consultants Inc Tal-1147" "Gunshy Manor Farm Property Draft Vegetation Plan – Letter of Explanation" in which the "Respondent" vegetation plans asserts the "Respondent" is already suffering loss of farmland yet, one cannot call that a loss if in fact that farmland was claimed from wetlands. Additionally, it is not the EPA's concern to mitigate that when

their role is to enforce the CWA and restore to whole the “Respondents” substantial illegal gains of farmland through the cumulative effect of the illegal dredging and fill.

The CAFO harms the Tribal rights as it fails to restore the salmon bearing stream watershed damage the “Respondent” caused to the wetland water filtering ecosystem critical for salmon streams such as Evans Creek. The EPA is allowing a 10’ stream buffer for “farming maintenance” on a stream “Farm ditch D2” (see picture Appendix B) that is fed by a natural spring (see picture Appendix B “SPRING”). 20’ between plantings will never allow for stream temperatures to support salmon. Why has the EPA allowed this proposal to omit full non-Farm use restoration on a spring fed stream “Type F”? Why has the EPA not made the “Respondent” restore any woody riparian vegetation on the banks of the stream? Why is the EPA allowing for a 10’ buffer on each side that is even worse than what exists today on the same “Farm Ditch D2”? Woody riparian vegetation alongside the stream creates habitat diversity in streams when trees and large shrubs fall into the channel, forming snags that provide habitat and shade for fish. For Tribal fishing grounds, springs are considered to be difficult-to-replace resources and compensatory mitigation should be provided through in-kind rehabilitation, enhancement, or preservation of these wetlands types. Why has the EPA allowed the “Respondent” to jeopardize all salmon recovery on a natural spring fed “farm ditch” when they could be seeking enhancement and restoral? Why has the EPA not demanded “Respondent” remove the new “farm road” connecting to 196th Ave NE that functions as a dike and why has the EPA not stopped the wetland pumping system installed during this illegal activity all since 2012? This CAFO harms the citizens who use the Sammamish waterway for recreational uses by generating downstream water pollution from the agriculture property and increased flooding such as the City of Redmond Parks Bear Creek trail and Evans Creek riverside trails experience since 2012. The EPA inaction makes it a de facto land use regulator, by failing to identify and demand restoration of all illegal fill and dredging in this CAFO. Thus the EPA is failing Taxpayers, Tribal rights, and recreational users.

Thank you for accepting and documenting the receipt of my comments as a concerned citizen who is directly downstream of the “respondents” area of enforcement action. I do not support the EPA’s CAFO as it currently stands and would cordially request the EPA resolve the serious damages and future risks that I have outlined in the above letter.

Cordially yours,

Ex. 6

Ex. 6

cc: Chan Pongkhamsing, EPA Region 10, CWA 404 Enforcement Coordinator
Krista Rave-Perkins, EPA Region 10

The Honorable Maria Cantwell, United States Senate
Karen Walters, Muckleshoot Tribal Nation, Fisheries Division, Habitat Team Leader
Matthew Bennett, Regulatory Section Branch Chief, U.S. Army Corps of Engineers
Craig Larsen, City of Redmond Parks, Director
Maxine Whattam, City of Redmond Parks, Director
Erik C. Stockdale, Section Manager, Shorelands and Environmental Assistance, WSDoE
Patrick McGraner, Wetlands Specialist, WSDoFW
Jon Pederson, King County, DPER, Project Manager (File No GRDE 14-0143)

APPENDIX

A

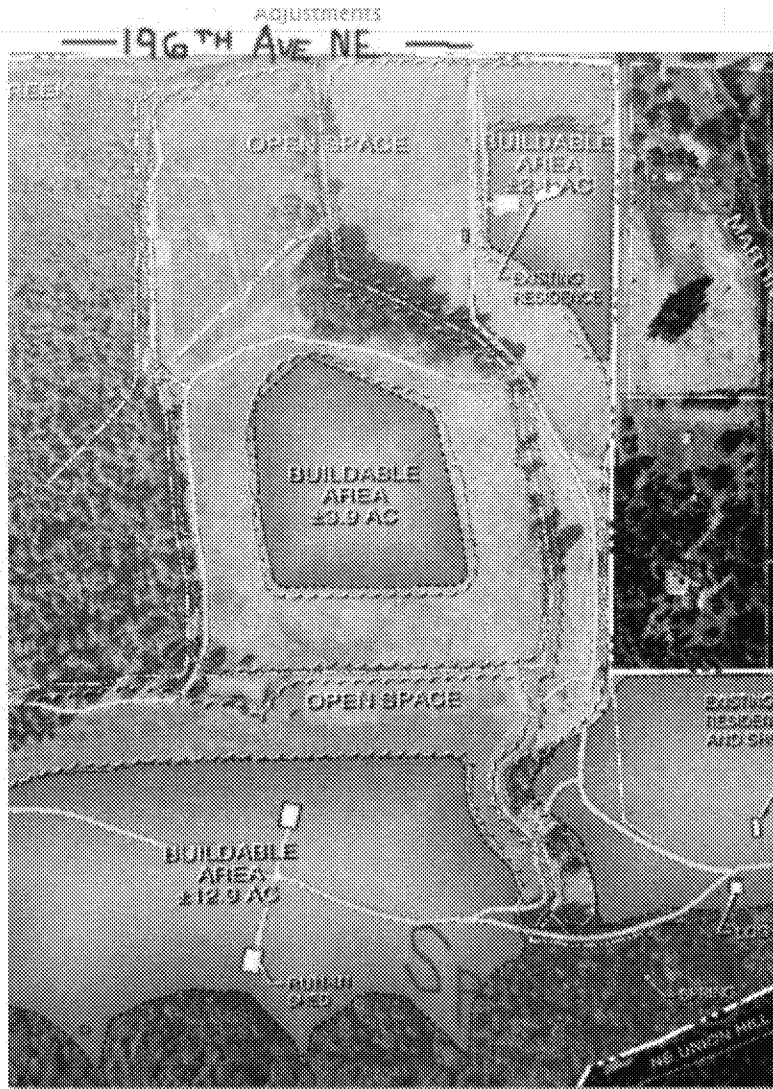
Specifically, the following areas of dredging and fill during the time of “Respondents” unpermitted activities are missing from the enforcement agreement and will continue further damages to Evans Creek, an essential water body in the Sammamish River watershed, a Rivers and Harbors Act recognized body that is regulated by statute known as the CWA.

1. In Exhibit A of the CAFO, the “Double Wide Pasture” is a wetland that once was flooded on both sides of the double wide driveway in the rainy season. This flooding of the wetland has drastically stopped now that the “Respondent” engaged a construction company in 2012/2013 called Cascade Utilities to build up the driveway to 196th Ave NE this is labeled “ROAD” on below picture. This new driveway grade is the same height as the road height of 196th Ave NE. This has created a dike to block flood water from Evans Creek.
2. In Exhibit A of the CAFO, the traditional wetland noted in the “Double Wide Pasture” is easy to find not just in the soils, but so is the 2012/2013 massive ground and surface water pumping installation that the “Respondent” engaged in without permit. Where in the CAFO is the requirement to make the “Respondent” stop pumping a wetland dry in the rainy season? This is the area labeled “PUMP” on the below picture and is a large scale surface water drainage and pumping station that the “Respondents” built on site during the period in question is evidence enough to require mitigation by removing the extensive ground/surface water pumping system in place. This system was also installed by Cascade Utilities of Redmond WA in the 2012/2013 time period.
3. The area on the map labeled “ROAD” that connects “Gunshy Manor” to the National Historic Register Landmark “Red Brick Road” aka 196th Ave NE and used to be driveway.

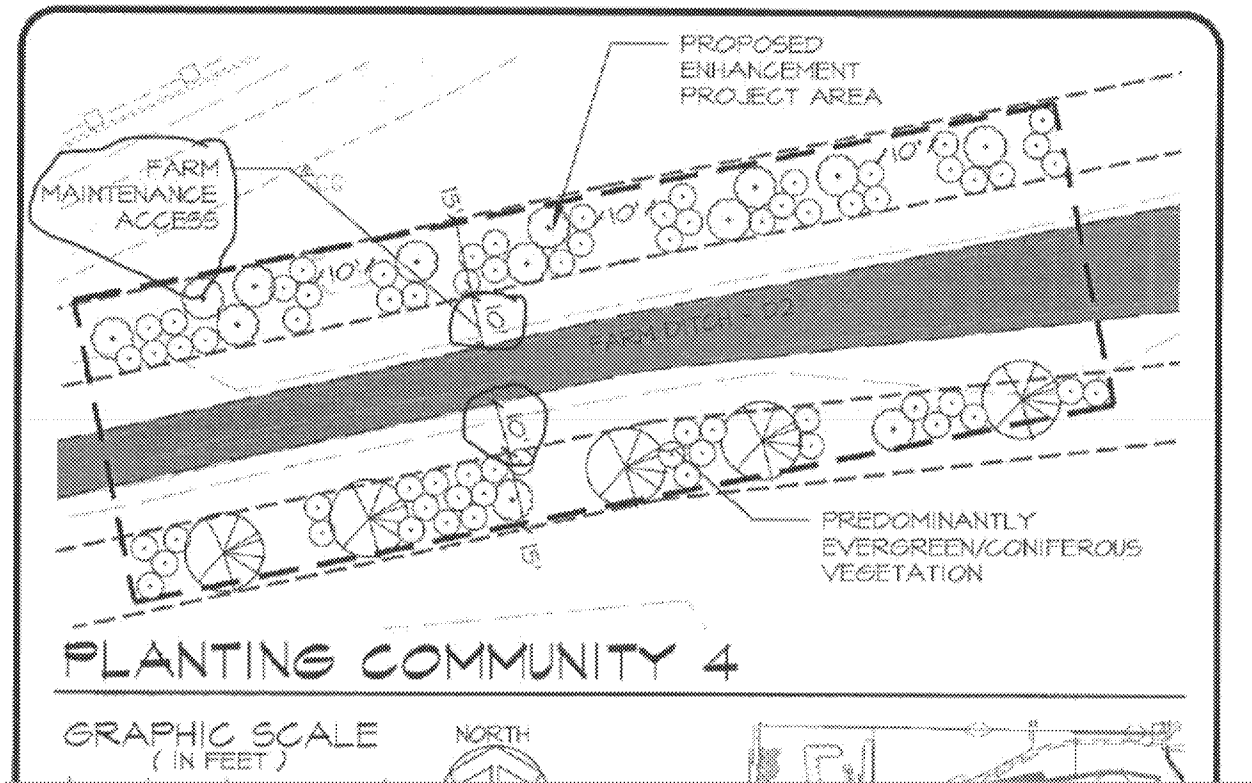




APPENDIX
B



EPA is allowing a 10' stream buffer for "farming maintenance" on a stream "Farm ditch D2" that is fed by a natural spring "SPRING" which "respondent" paid study classified as Type "F" stream. Respondent currently uses broadspectrum herbicides along Type "F" Farm Ditch D2 to kill all vegetation.



CWA-10-2016-0087-AOC "TALASAEA Consultants Inc Tal-1147" "Gunshy Manor Farm Property Draft Vegetation Plan with 20' of non-shaded open space from spring fed stream called "Farm Ditch - D2"